

## Appendix A

### BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the matter of the order instituting investigation on the Commission's own motion, notice of opportunity to be heard, and order to show cause regarding the operations and practices of Arnold Ray Baeza, an individual Doing Business as Best Movers,

Respondent

Investigation 04-02-008  
(Filed February 11, 2004)

### SETTLEMENT

#### 1. INTRODUCTION AND BACKGROUND

Pursuant to Article 13.5 of the Commission Rules of Practice and Procedure, the Respondent named above and the Consumer Protection and Safety Division (CPSD) hereby agree to settle without having an evidentiary hearing, the Order Instituting Investigation (I.) 04-02-008. A summary of the background is as follows:

- Beginning on or about May 16, 2002 according to Commission decision (D.) 02-05-028, the Respondent was allowed to apply for reinstatement of his permit but placed on probation for three years for past violations of the California Household Goods Carriers Act (Act) and Commission rules and regulations thereto.
- On February 11, 2004, the Commission issued I. 04-02-008, finding that the Respondent had failed to comply with the terms and conditions of his probation in D. 02-05-028.

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- On April 22, 2004, a prehearing conference was held in Los Angeles CA at which the Respondent appeared late and was not represented by counsel. A hearing was scheduled for June 23, 2004.
- On April 23, 2004, the Respondent wrote the Presiding Officer that he had retained James Kosnett as his attorney in this matter.
- On or about May 7, 2004, the Respondent and CPSD counsel, Cleveland Lee, negotiated this Settlement.<sup>1</sup>

In consideration of the mutual covenants contained in this Settlement, and for other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the Parties agree as follows:

### 2. TERMS AND CONDITIONS

- 2.1 **Fines.** Within 30 calendar days after the Commission issues a decision adopting and approving this Settlement, the Respondent will pay the Commission as a fine the amount of \$6,000, and within every 30 calendar day period thereafter, pay an amount of \$500, until the Respondent has paid in total to the Commission \$19,000. In addition, the Respondent must include with his \$6,000 payment described above payment for all past due household goods carrier "Transportation Rate Fund Fees," calculated on gross operating revenues.<sup>2</sup> Each of the payments must be in the form of a cashier check made payable to the order of the Commission and delivered to CPSD Transportation Enforcement Supervisor, Suong T. Le, 505 Van Ness Ave, San Francisco CA 94102.

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<sup>1</sup> See also, the factual backgrounds stated in I.04-02-008 and D.02-05-028, which are incorporated by reference as if fully stated here. The term "Section" means hereafter provisions of the California Public Utilities Code, unless otherwise indicated.

<sup>2</sup> See Section 5001 *et. seq.*

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**2.2 Application.** The Respondent must apply for a household goods carrier permit and may not advertise or otherwise hold himself out to the public or engage in business as a household goods carrier until the Commission has issued the Respondent a household goods carrier permit. As part of his application, the Respondent must perform the following:

- 2.2.1 Pay the appropriate licensing fees;
- 2.2.2 Pass the required written MAX 4 examinations;
- 2.2.3 Submit fingerprints for background check;
- 2.2.4 Maintain in effect and on file with the Commission the requisite insurance coverages; and
- 2.2.5 State and prove that he has paid in full (including costs) the outstanding Small Claims Court judgment pertaining to customer Gilbert, as ordered by the D.02-05-028.<sup>3</sup>

**2.3 Probation.** If granted a permit, Respondent agrees to perform all of the following for a probationary term of three years, which will begin the day after the date when the Commission issues its decision approving and adopting this Settlement.

- 2.3.1 Within 60 days after any final court judgment is rendered against the Respondent, pay in full the amount ordered by the court to the customer/complainant bringing the lawsuit pertaining to the Respondent's household goods carrier service.

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<sup>3</sup> Ordering Para. 7 of D.02-05-028, 2002 Cal. PUC LEXIS 247 at \*24.

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- 2.3.2 Maintain on file and in effect the required insurance coverages;
- 2.3.3 File quarterly written reports of operations with the Commission every 90 calendar days, with the first report due on the 90th calendar day after the date of the Commission order adopting this Settlement. Each subsequent report must be filed no later than 90 calendar days thereafter. Each report must be signed by the Respondent under penalty of perjury, and delivered to Suong T. Le, California Public Utilities Commission, Transportation Enforcement Supervisor, Consumer Protection and Safety Division, 505 Van Ness Avenue, San Francisco, California 94102-3298.<sup>4</sup>
- 2.3.4 Each report must contain or attach the following data:
  - 2.3.4.1 A summary of all consumer complaints made against the Respondent or any of his employees for the preceding 90 days;
  - 2.3.4.2 The subject of each complaint and the name, address, and telephone number of the complainant;
  - 2.3.4.3 The disposition of the complaint by the Respondent;

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<sup>4</sup> The Staff, the assigned Commissioner, or the assigned Administrative Law Judge may substitute another individual in place of Suong T. Le.

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2.3.4.4 A copy of all correspondence or other written communication between the complainant and the Respondent and/or any of his employees;

2.3.4.5 A copy of any court judgment rendered final against the Respondent and proof of payment thereof;

2.3.5 Comply with all pertinent state statutes and Commission General Orders, tariffs, rules, and regulations governing household goods carriers, including but not limited to the Household Goods Carriers Act, Section 5101 et seq., General Orders 100-M, 136-C, 142, and the Commission's Maximum Rate Tariff<sup>4</sup>.

### **3. Default and Remedies**

3.1 Pursuant to Section 5285(b), if the Respondent violates or fails to comply with any provision of this Settlement, Commission rules and regulations, or any Commission or judicial decision, CPSD may petition to reopen this or initiate another Commission proceeding for purposes of, but not limited to, revoking permanently and/or immediately suspending the Respondent's permit, and imposing fines and penalties under Sections 5313 to 5315 for any violations occurring after the effective date of D. 02-05-028..

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- 3.2 Upon demand by CPSD, the Respondent agrees to relinquish his household goods carrier permit and immediately cease holding himself out or performing any work as a household goods carrier, if a proceeding described in item 3.1 above is brought.
- 3.3 The Respondent agrees not to contest any proceeding described in item 3.1 above.

### **4 Miscellaneous Provisions**

- 4.1 The Parties agree that the Commission has primary jurisdiction over any interpretation, enforcement, or remedies pertaining to this Settlement, as indicated by California Constitution, Article XII, section 8. No Party may bring an action pertaining to this Settlement in any local, state, or federal court or administrative agency without first having exhausted its administrative remedies at the Commission.
- 4.2 The Parties acknowledge that this Settlement is subject to approval by the Commission. As soon as practicable after all the Parties have signed this Settlement, CPSD will file a Motion requesting Commission adoption. The Parties must furnish such additional information, documents, and/or testimony as the Commission may require in granting said Motion and adopting this Settlement.
- 4.3 The provisions of this Settlement are not severable. If any Party fails to perform its respective obligations under this Settlement, the Settlement may be regarded as rescinded.

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- 4.4 The Parties acknowledge and stipulate that they are agreeing to this Settlement freely, voluntarily, and without any fraud, duress, or undue influence by any Party. Each Party hereby states that it has read and fully understands its rights, privileges, and duties under this Settlement. Respondent further acknowledges full understanding of his right to discuss this Settlement with his legal counsel, and has availed himself of that right to the extent deemed necessary. In executing this Settlement, each Party declares that the provisions herein are fair, adequate, reasonable, and mutually agreeable. Respondent further acknowledge that as set forth in this Settlement, no promise or inducement has been made or offered him.
- 4.5 Each Party further acknowledges that after the execution of this Settlement, discovery may continue of facts that are in addition to or different from those known or believed to be true by any of the Parties. Respondents agree to cooperate fully with such inquiries. However, it is the intention of each Party to settle, and each Party does settle, fully, finally, and forever, the matters set forth in this Settlement notwithstanding such discovery.
- 4.6 This Settlement constitutes the Parties' entire Settlement, which cannot be amended or modified without the express written and signed consent of all the Parties hereto.


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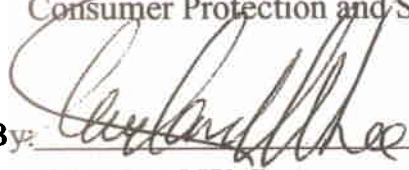
- 4.7 No Party has relied or presently relies upon any statement, promise or representation by any other Party, whether oral or written, except as specifically set forth in this Settlement. Each Party expressly assumes the risk of any mistake of law or fact made by such Party or its authorized representative.
- 4.8 This Settlement may be executed in any number of separate counterparts by the different Parties hereto with the same effect as if all Parties had signed one and the same document. All such counterparts shall be deemed to be an original and shall together constitute one and the same Settlement.
- 4.9 This Settlement shall be binding upon the respective Parties hereto, their legal successors, assigns, agents, or corporations (e.g., parent , subsidiaries, affiliates, divisions, units, officers, directors, and/or shareholders).
- 4.10 This Settlement shall become effective and binding on the Parties as of the date it is fully executed.



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**IN WITNESS WHEREOF**, the Parties, hereto have set their hands on the day and in the year indicated below:

By:  Date: 6/30/04  
**Richard W. Clark**  
Director  
Consumer Protection and Safety Division

By:  Date: 7/01/04  
**Cleveland W. Lee**  
Staff Counsel  
Attorney for the Consumer Protection and Safety Division

By: \_\_\_\_\_ Date: \_\_\_\_\_  
**Arnold Ray Baeza**

By: \_\_\_\_\_ Date: \_\_\_\_\_  
**James Kosnett**  
Attorney for Arnold Ray Baeza

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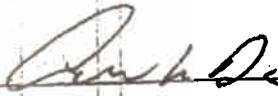
**IN WITNESS WHEREOF**, the Parties, hereto have set their hands on the day and in the year indicated below:

By: \_\_\_\_\_ Date: \_\_\_\_\_

**Richard W. Clark**  
Director  
Consumer Protection and Safety Division

By: \_\_\_\_\_ Date: \_\_\_\_\_

**Cleveland W. Lee**  
Staff Counsel  
Attorney for the Consumer Protection and Safety Division

By:  \_\_\_\_\_ Date: 30 June 04

**Arnold Ray Baeza**

By:  \_\_\_\_\_ Date: 6-30-04

**James Kosnett**  
Attorney for Arnold Ray Baeza

**(END OF APPENDIX A)**